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Supreme Court, U.S.
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No. ——

IN THE

Supreme Court of the United States

DANIEL L. THOMPSON,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In determining that an indigent defendant knowingly and intelligently waived his Sixth Amendment right to counsel, may a reviewing court rely on the entire court record, including statements made by the defendant after the waiver occurred?

PARTIES TO THE PROCEEDING

Petitioner Daniel Lee Thompson was the only appellant in Case No. 04-5062 before the United States Court of Appeals for the Fourth Circuit. The United States of America is the sole respondent. There are no parent or subsidiary companies required to be listed under S. Ct. R. 29.6.

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* Chhabra is the lead defendant in Crim. No. 03-530A (E.D. Va. July 7, 2004). Petitioner Daniel L. Thompson was also a named defendant in that case.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Daniel Lee Thompson respectfully requests that this Court issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINION BELOW

The decision of the United States Court of Appeals for the Fourth Circuit, docket No. 04-5062 (unpublished), is reprinted at Pet. App. 1a-14a. The relevant excerpt of the transcript of the arraignment hearing held by the Honorable Leonie M. Brinkema of the United States District Court for the Eastern District of Virginia (Alexandria Division) is reprinted at Pet. App. 15a-19a.

JURISDICTION

The judgment of the court of appeals was entered on July 25, 2006. On September 18, 2006, the Chief Justice extended the time within which to file a petition for a writ of certiorari to November 22, 2006. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

This case involves the Sixth Amendment of the Constitution of the United States, which states:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

STATEMENT OF THE CASE

At Daniel Thompson's arraignment hearing on criminal charges in the Eastern District of Virginia, the district court informed him that he was not entitled to court-appointed counsel, even though he was in significant debt and he met the requirements for obtaining such counsel. Because he could not afford to retain his own attorney, Thompson was forced to represent himself. On direct appeal to the Fourth Circuit, Thompson asserted that the deprivation of court-appointed counsel denied him his Sixth Amendment right to counsel during critical stages of the proceedings in the seven months following his arraignment.

The Fourth Circuit held that the district court erred by finding that Thompson was ineligible for court-appointed counsel. Nonetheless, it concluded that Thompson knowingly and intelligently waived his right to an attorney at his arraignment. The Fourth Circuit reached its conclusion by placing near-conclusive weight on statements Thompson made several months after his arraignment.

The Fourth Circuit's approach of relying on the whole record—and, in particular, of relying on post-waiver evidence—to evaluate a Sixth Amendment waiver stands in stark conflict with several other Circuits' analyses, and, if allowed to stand, effectively eliminates the requirement that a waiver of counsel be knowing and intelligent. Had Thompson's case arisen in one of the many Circuits that has rejected the Fourth Circuit's approach, his waiver could not have been found knowing and intelligent because there was no contemporaneous evidence to support such a finding.

Accordingly, this Court's review is necessary to resolve an issue that has divided the Courts of Appeals: whether a reviewing court may, consistent with the Sixth Amendment, rely on post-waiver evidence to determine the validity of an

indigent criminal defendant's waiver of his right to counsel, or whether an appellate court's review must be confined to the circumstances existing at the time of the waiver.

A. Factual Background

Daniel Thompson was indicted for violating the Controlled Substances Act, 21 U.S.C. § 841 *et seq.*, by prescribing controlled substances following online medical consultations. Before his arraignment, Thompson filed a Criminal Justice Act financial affidavit stating his indigency. Pet. App. 36a-37a. Specifically, Thompson declared that his only income was a $1,000 allowance from a trust and that he had less than $500 in assets. *Id.* He also stated that he had been unemployed for over three years, and that at the time of his last employment his monthly income had been approximately $100,000. *Id.* He further stated that he owed approximately $1,000,000 for an IRS tax levy, liens, and a "criminal investigation"; $200,000 in credit card debt; and $115,000 to an Ohio bank. *Id.* In addition, he stated that his teenage daughter was his dependent. *Id.* In an attached letter, Thompson stated that he would defend himself because of financial problems that arose with his prior attorney and that he was attaching the financial affidavit in case "bail becomes an issue." *Id.* at 37a. The government never challenged the accuracy of Thompson's financial affidavit.

At his December 19, 2003 arraignment hearing, the court asked Thompson if he was "*pro se*." When Thompson responded that he was, the court erroneously told him that he did not qualify for court-appointed counsel. The court "strongly recommend[ed]" that Thompson "liquidate[] whatever assets" he had in order to retain counsel. *Id.* at 16a.

The court explained the potential pitfalls associated with self-representation, including that he should "understand that

as [he speaks, he] may be making admissions or statements that the prosecution can use against" him. *Id.* Because Thompson had graduated from medical school, the court explained that it had "no doubt that [he could] adequately represent [him]self, but there's nothing like having a lawyer." *Id.* Thompson inquired whether the court would appoint "shadow counsel," but the court declined the request, telling Thompson that CJA funding was limited and that such an appointment would not be an "appropriate" use of taxpayer money. *Id.* at 17a. Because he could not afford to pay a lawyer, Thompson proceeded without counsel for the next seven months, over the course of several critical stages of his case.

In that time, Thompson committed many serious errors in his self-defense that likely affected the outcome of his prosecution. For example, Thompson missed the deadline to designate, and hence offer, expert witnesses. *Cf. Estelle v. Smith*, 451 U.S. 454, 470-71 (1981) (recognizing the significant contribution that counsel makes in dealing with expert testimony). Early on, the court had opined that whether Thompson's actions were criminal would depend largely on expert testimony:

> The only way or one of the ways in which the defense has to put on its case is . . . to have medical experts come in and say that the manner in which . . . the doctor[s] . . . were evaluating these patients and making a judgment as to the appropriateness of issuing these prescriptions and the manner in which the pharmacists were handling those prescriptions fell within the appropriate medical practice of pharmaceutical practices. . . .
>
> Without that, it seems to me you're going to have a tough time with your defense because of the [federal

> regulations regarding what constitutes a legitimate medical practice].

J.A. 267.[1] At trial, the government offered a medical expert who opined that Thompson's medical practice was illegitimate. Thompson provided no witnesses other than his own lay testimony in rebuttal. With expert evidence that Thompson's actions were within the norms of professional practice, especially as applied to an emerging field of medicine, the jury likely would not have convicted him.

Thompson's forced self-representation also significantly hampered his ability to conduct meaningful discovery. This Court has recognized that counsel's assistance during discovery is crucial because of a lawyer's special training in determining the relevancy of evidence. *Powell v. Alabama*, 287 U.S. 45, 69 (1932); *see also Adams v. Illinois*, 405 U.S. 278, 282 (1972). This is especially true here, where Thompson was faced with mountains of evidence totaling nearly one million pages and was able to review only a quarter of them. J.A. 109.

Finally, during the first several months following arraignment, several of Thompson's co-defendants' attorneys negotiated and finalized favorable plea agreements with the government that resulted in ultimate sentences ranging from probation to twelve months of incarceration. J.A. 45, 47, 49, 73, 75-76, 86, 117. During that period, Thompson did not engage in any plea negotiations. His sentence of thirty-seven months—the highest of all sentences imposed—reflects the prejudice Thompson suffered by not engaging in early negotiations.

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[1] References to "J.A." are to the Joint Appendix filed in the Fourth Circuit.

In June 2004, six months after his arraignment hearing and three months before trial, Thompson moved for "indigency status." The court then reconsidered Thompson's financial ineligibility based on "the same representations regarding his limited income" that he made previously, and concluded that Thompson *was* indigent. Pet. App. 20a. It offered Thompson counsel, and he accepted the appointment.

Soon thereafter, Thompson's relationship with his appointed counsel deteriorated. Since Thompson's prosecution was one of the first in which the government used the Controlled Substances Act against doctors practicing medicine online, an effective defense required familiarity with the Internet. According to Thompson, his court-appointed attorney was not proficient at using computers, did not use e-mail, and was wholly ignorant about the Internet. J.A. 355. Given the nature of the charges, the impending trial date, and the voluminous electronic discovery, Thompson believed that the court-appointed attorney could not effectively assist him, and therefore chose to invoke his right of self-representation.

In that vein, on July 22, 2004—more than seven months after his arraignment—Thompson wrote to the district court claiming that he "was surprised to find out that the Court was . . . providing me with an attorney." J.A. 356. He also wrote that he "did not request a court appointed attorney during [his] arraignment in December of 2003, because [he] wanted to defend [him]self." *Id.* at 355. He further wrote that a "review of all of [his] motions as well as the arraignment statements will show that [he] never requested court appointed counsel." *Id.* at 356. Thompson further wrote that he did not "request a Court-appointed attorney this close to the trial (July of 2004) because it would not be possible for such an attorney to be ready for a September 7th trial involving multiple defendants, a million pages of discovery,

and conspiracy charges." *Id.* at 355. In addition, according to Thompson, the appointed attorney was "more of a hindrance than [a] help" and having him represent Thompson was "impossible because of his . . . lack of computer skills." *Id.* at 357. In response, the district court granted Thompson's request to proceed *pro se*.

Thompson then assumed *pro se* status and proceeded to trial, along with three co-defendants. Only Thompson was convicted. The district court sentenced him to thirty-seven months in prison.[2]

B. The Fourth Circuit's Decision

On direct appeal, Thompson challenged the validity of his waiver of counsel. The Fourth Circuit determined that the district court erroneously concluded at the arraignment that Thompson did not qualify for court-appointed counsel, since Thompson's unchallenged financial affidavit revealed that "he was then unemployed, had less than $500 in assets, received only $1,000 each month from a trust account, and had more than $1.3 million debt."[3] Pet. App. 4a. Yet it went

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[2] Following Thompson's sentencing, the district court appointed the undersigned counsel to represent him on appeal.

[3] Constitutionally, a defendant is entitled to counsel as soon as the pre-trial process reaches a "critical stage"—*i.e.*, when there is a substantial risk of prejudice to the defendant's rights. *See United States v. Wade*, 388 U.S. 218, 227-28 (1967). Thompson's waiver occurred during his arraignment hearing. The Fourth Circuit has repeatedly assumed without deciding that an arraignment is a "critical stage" at which the right to counsel applies, even though this Court's precedent indicates that an arraignment *is* a critical stage. *Compare, e.g.*, *Thompson*, Pet. App. 11a n.3, and *United States v. Owen*, 407 F.3d 222, 225 (4th Cir. 2005) *cert. denied*, 126 U.S. 1026 (2006), *with, e.g.*, *Hamilton v. Alabama*, 368 U.S. 52, 55 n.4 (1961) (holding that an arraignment hearing in Alabama is a critical stage and noting that under "federal law an arraignment is a *sine qua non* to the trial itself—the preliminary stage where the accused is informed of the indictment and pleads to it, thereby formulating the issue

on to review the "record as a whole" to determine the sufficiency of Thompson's waiver of counsel. *Id.* 13a. The court acknowledged that *Faretta v. California*, 422 U.S. 806 (1975), set a high bar for finding a valid waiver of counsel, but concluded that events "subsequent" to the arraignment "confirm[ed] that [Thompson] knowingly, intelligently, and voluntarily waived his right to counsel." Pet. App. 12a.

The Fourth Circuit devoted several pages of its decision to its explanation of why an "entire record" approach is permissible to determine the validity of a waiver, but in a footnote on the last page of the opinion it also claimed that its "entire record" approach was not dispositive, and that its conclusion was based on Thompson's financial affidavit, the letter that accompanied it, and statements made during the arraignment. Pet. App. 13a n.6. The Fourth Circuit posited that although "the district court erred by not initially offering him counsel, the district court reasonably and correctly believed, based on [Thompson's] pre-arraignment letter and his comments at the arraignment, that [Thompson] intended to represent himself." *Id.* at 13a.

REASONS FOR GRANTING THE PETITION

Review by this Court is necessary because the Fourth Circuit's erroneous application of *Faretta v. California* significantly conflicts with the decisions of other Courts of Appeals. The Fourth Circuit's approach, which was dispositive of its rejection of Thompson's claim, is contrary to the Sixth Amendment principles set forth in this Court's precedent, including *Faretta*, because it permits a court to determine the adequacy of a waiver by relying on post-waiver statements.

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to be tried"); *White v. Maryland*, 373 U.S. 59, 60 (1963) (approvingly citing *Hamilton* and holding that a preliminary hearing in Maryland is a critical stage).

1. The Sixth Amendment guarantees that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence." U.S. Const. amend. VI. Thus, if a defendant "is not represented by counsel and has not competently and intelligently waived his constitutional right, the Sixth Amendment stands as a jurisdictional bar to a valid conviction and sentence depriving him of his life or his liberty." *Johnson v. Zerbst*, 304 U.S. 458, 468 (1938); *see also Lackawanna County Dist. Atty. v. Coss*, 532 U.S. 394, 404 (2001) (noting that failure to appoint counsel is a "'unique constitutional defect'" (quoting *Custis v. United States*, 511 U.S. 485, 496 (1994)). Accordingly, an indigent defendant's Sixth Amendment rights are violated unless he is offered court-appointed counsel for his defense. *See Gideon v. Wainwright*, 372 U.S. 335, 343-44 (1963).

In order to ensure that an indigent defendant is afforded his full spectrum of rights under the Sixth Amendment, an indigent defendant may not waive his right to counsel unless he understands that he has a right to an attorney. *See Johnson*, 304 U.S. at 464 ("A waiver is ordinarily an intentional relinquishment or abandonment of a known right or privilege"). Courts must indulge "every reasonable presumption" against waiver to ensure that an indigent defendant's constitutional rights are not infringed. *See, e.g.*, *id.* at 458; *Edwards v. Arizona*, 451 U.S. 477, 482 (1981). Waiver of the right to counsel must be a "knowing, intelligent act[] done with sufficient awareness of the relevant circumstances." *Brady v. United States*, 397 U.S. 742, 748 (1970); *cf.* 3 Wayne R. LaFave, *Criminal Procedure* § 11.3(a), at 539 (2d ed. 1984) (noting that the Court has "repeatedly warned the lower courts against simply assuming that the defendant has the necessary knowledge and understanding to make a constitutionally acceptable waiver").

The Sixth Amendment also guarantees defendants a right to self-representation. That right is in direct tension with the right to counsel, since the invocation of one necessarily waives the other. *See Faretta v. California*, 422 U.S. 806, 835 (1975). Accordingly, "in order to represent himself, the accused must 'knowingly and intelligently' forego [the] relinquished benefits" associated with the right to counsel. *Id.* at 835. To establish an effective waiver, the record must show that the defendant "knows what he is doing and [that] his choice is made with eyes open." *Id.* (quotation marks omitted); *see also Iowa v. Tovar*, 541 U.S. 77, 81 (2004) (requiring the trial court to inform the accused of, *inter alia*, "his right to be counseled regarding his plea" in order for the constitutional requirement to be satisfied); *Carnley v. Cochran*, 369 U.S. 506, 513 (1962) (accused must "intelligently and understandingly waive the assistance of counsel"); *Von Moltke v. Gillies*, 332 U.S. 708, 727 (1948) (accused must enter into waiver "competently, intelligently, and with full understanding of the implications"); *Adams v. United States ex rel. McCann*, 317 U.S. 269, 279 (1942) (accused must "know[] what he is doing and his choice [must be] made with eyes open").

Because of the extraordinary significance of a waiver of the right to counsel, this Court requires such waivers to be based on express statements in the record:

> Presuming waiver from a silent record is impermissible. The record must show, or there must be an allegation and evidence which show, that an accused was offered counsel but intelligently and understandingly rejected the offer. Anything less is not waiver.

Carnley, 369 U.S. at 516. In addition, "the law ordinarily considers a waiver knowing, intelligent, and sufficiently

aware if the defendant *fully understands the nature of the right and how it would likely apply in general in the circumstances*—even though the defendant may not know the specific detailed consequences of invoking it." *United States v. Ruiz*, 536 U.S. 622, 629 (2002) (emphasis added). Thus, once a defendant knows that the right applies to him, he "may waive his right to remain silent, his right to a jury trial, or his right to counsel even if the defendant does not know the specific questions the authorities intend to ask, who will likely serve on the jury, or the particular lawyer the State might otherwise provide." *Id.* at 629-30.

Although this Court has yet to squarely address the propriety of an "entire record" approach to determining the constitutionality of a waiver, it has suggested that such an approach may be utilized only to the extent that the events supporting a finding of waiver occurred *before* the alleged waiver. *See United States v. Vonn*, 535 U.S. 55, 59, 75 (2002) (noting that there "are circumstances in which defendants may be presumed to recall information provided to them prior to the plea proceeding").

2. Courts have taken two distinctly different approaches to assessing the constitutionality of a waiver. On one hand, the Fourth Circuit has joined the Second, Sixth, Seventh, and Eighth Circuits by reviewing the "entire record" to determine the validity of the waiver. *See e.g.*, *Torres v. United States*, 140 F.3d 392, 401 (2d Cir. 1998); *King v. Bobby*, 433 F.3d 483, 492 (6th Cir. 2006), *cert. denied*, No. 06-6203, 2006 WL 2516070 (U.S. Oct. 30, 2006); *United States v. Egwaoje*, 335 F.3d 579, 585 (7th Cir. 2003); *United States v. Kind*, 194 F.3d 900, 903-04 (8th Cir. 1999).[4] Such an approach

[4] Several state courts also have adopted the "entire record" approach. *See, e.g.*, *People v. Providence*, 813 N.E.2d 632, 635 (N.Y. 2004) (stating that "reviewing court may look to whole record, not simply to the waiver

permits—as in the decision below—a court to rely exclusively on *post-waiver* evidence to conclude that a waiver was knowing and intelligent. *See* Pet. App. 12a ("Subsequent events confirm that Dr. Thompson knowingly, intelligently, and voluntarily waived his right to counsel.").

In contrast, several other Courts of Appeals have preserved a temporal restriction on determining whether an accused has knowingly and intelligently waived the right to counsel. At least the Third, Ninth, Tenth, and Eleventh Circuits would have concluded that Thompson's waiver could not have been knowing and intelligent because no facts establish that Thompson knew at the time of his purported waiver that he had a right to counsel *See, e.g., Piankhy v. Cuyler*, 703 F.2d 728, 730 (3d Cir. 1983); *United States v. Allen*, 895 F.2d 1577, 1578 (10th Cir. 1990); *Stano v. Dugger*, 921 F.2d 1125, 1142 (11th Cir. 1991); *United States v. Erskine*, 355 F.3d 1161, 1169 (9th Cir. 2004).[5]

The Second Circuit's use of the "entire record" approach is similar to the one approved by several circuits. In *Torres v. United States*, for example, the defendant waived her right to court-appointed counsel at arraignment. 140 F.3d at 401. On the third day of trial, the court informed her that the jury—not the judge—would determine her sentence. Torres

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colloquy, in order to determine if a defendant effectively waived counsel"); *McClinton v. United States*, 817 A.2d 844, 855 (D.C. 2003); *Cerkella v. State*, 588 So. 2d 1058, 1059 (Fla. Dist. Ct. App. 1991); *Evans v. State*, 822 P.2d 1370, 1374 (Alaska Ct. App. 1991).

[5] Some state courts have also adopted this approach. *See, e.g., City of St. Peters v. Hodak*, 125 S.W.3d 892, 895 (Mo. Ct. App. 2003) (holding that as a "[a]s a practical matter" a formal inquiry is necessary; not conducting one is "insufficient"); *State v. Wiggins*, 677 A.2d 800, 805 (N.J. Super. Ct. App. Div. 1996) (holding that that a searching inquiry at the time of the waiver is necessary so the reviewing court may determine whether the waiver was knowing and voluntary).

claimed that her prior waiver of counsel could not have been knowing and intelligent because she was unaware of the sentencing protocol. The Second Circuit rejected that argument, concluding that the district court's contested omission "must be viewed by examining the totality of the record." *Id.* at 404. Applying that test, the Second Circuit concluded that the waiver was valid because the district court had *previously* informed the defendant of the risks of proceeding *pro se* and had offered the defendant a court-appointed attorney. *Id.*

Similarly, the Sixth Circuit recently deviated from its prior caselaw by electing to follow the "entire record" approach. *Compare King*, 433 F.3d at 492 with *United States v. McDowell*, 814 F.2d 245, 250 (6th Cir. 1987) (requiring a trial court to conduct a thorough inquiry to determine a defendant's knowledge of his Sixth Amendment rights); *United States v. Miller*, 910 F.2d 1321, 1324 (6th Cir. 1990) (same). It justified this disregard of its precedent by asserting that such an inquiry "is not required by clear Supreme Court precedent." *King*, 433 F.3d at 492.

In *King*, the Sixth Circuit held that *Faretta* permits a review of "the whole record, not just the colloquy immediately before the signing of the waiver [of the right to counsel], to determine if it was knowingly and intelligently entered." *King*, 433 F.3d at 492. The Sixth Circuit implicitly determined that the *Faretta* colloquy was insufficient, but nevertheless concluded that the waiver was valid because the "record . . . reflects that [the defendant] knew of his right to be represented by counsel and intelligently waived that right." *Id.* For example, the court noted that the defendant had *previously* mentioned to the trial court that he was aware he had the right to appointed counsel. *Id.*

The Seventh and Eighth Circuits have adopted similar views. *See, e.g.*, *Kind*, 194 F.3d at 904-05 (noting that the district court's warnings on the perils of self-representation during a *Faretta* inquiry were "less instructional than might be necessary in other cases," but nevertheless concluding that the defendant's waiver was adequate based upon a "review of the entire record"); *Egwaoje*, 335 F.3d at 585 (noting that the inquiry for determining the validity of a waiver "at all times is directed to the record as a whole and we ask whether that record supports a knowing and intelligent waiver").

In sharp contrast to the "entire record" approach, the Third, Ninth, Tenth, and Eleventh Circuits require significantly more scrutiny to determine the validity of a Sixth Amendment waiver. To begin with, the Third Circuit has explicitly and repeatedly held that a criminal defendant's waiver cannot be valid unless it can be determined that, *at the time of the waiver*, the trial court ensured that the defendant understood his right to a court-appointed attorney. *See Piankhy*, 703 F.2d at 731 ("A defendant's statement that he understands his right to counsel and desires to waive that right does not automatically end the judge's responsibility. . . . A judge can make certain that an accused's professed waiver of counsel is understandingly and wisely made only from a penetrating and comprehensive examination of all the circumstances.") (quotation marks omitted; alteration in original); *United States v. Welty*, 674 F.2d 185, 189 (3d Cir. 1982) (requiring a trial court to conduct a "penetrating and comprehensive examination" with the defendant, ensuring the defendant's apprehension of the nature of the charges, the statutory offenses included within them, the range of allowable punishments thereunder, possible defenses to the charges and circumstances in mitigation thereof, and "all other facts essential to a broad understanding of the whole matter"); *Buhl v. Cooksey*, 233 F.3d 783, 789 (3d Cir. 2000)

(holding that it "is axiomatic that a criminal defendant's waiver of a constitutional right must be voluntary, knowing and intelligent" and finding that the defendant's assertion of his right to dismiss his appointed counsel and proceed *pro se* should have been honored).

The facts in *Piankhy* are remarkably similar to the ones presented here, yet there, the court concluded that the defendant could not have knowingly and intelligently waived his right to counsel. The trial court had engaged the defendant in a colloquy to determine whether he wanted to proceed to trial without counsel. 703 F.2d at 729. During the colloquy, the court described the charges, informed the defendant that he would be required to follow procedural rules, and "recommended that he not proceed without an attorney." *Id.* The court never "actually state[d] to Piankhy that he had a right to a lawyer." *Id.* Piankhy nevertheless indicated that he wanted to defend himself, and signed a form indicating that he had "been informed of his right to be assigned counsel but had elected to waive that right." *Id.*

The Third Circuit observed that although the trial court explained the nature of the charges and recommended that the defendant obtain an attorney, the trial court failed to inform the defendant of "his right to a court-appointed attorney if he could not afford one." *Id.* at 731. That "omission" was significant, because the defendant had previously sought counsel from the public defender's office and was told that he did not qualify financially. Accordingly, the Third Circuit concluded that the defendant may not have understood that he had a right to court-appointed counsel.

Moreover, in *United States v. Salemo*, the Third Circuit made explicit one of the implicit underpinnings of its decision in *Piankhy*. There, it expressly recognized that the validity of a waiver must be measured at the time the waiver

is made. *Compare United States v. Salemo*, 61 F.3d 214, 221 (3d Cir. 1995) (holding that "the colloquy between the defendant and trial judge is the preferred method of ascertaining that a waiver is voluntary, knowing and intelligent") (quotation marks omitted), *with* Pet. App. 10a-11a (holding that "no particular form of colloquy was required" and permitting review of the entire record to determine waiver validity).

Like the Third Circuit, the Tenth Circuit has preserved the constitutional requirement that a waiver must be knowing and voluntary. *See, e.g., United States v. Allen*, 895 F.2d 1577, 1579 (10th Cir. 1990). In *Allen*, the Tenth Circuit confirmed the basic constitutional principle that "before allowing a defendant to proceed *pro se*, the district judge must ensure and establish on the record that defendant 'knows what he is doing and [that] his choice is made with eyes open." *Id.* at 1578 (citation omitted). In addition, the trial judge must conduct "an inquiry sufficient to establish a defendant's knowledge and understanding of the factors [required for valid waiver]." *See United States v. Padilla*, 819 F.2d 952, 959 (10th Cir. 1987).

The rationales employed by the Ninth and Eleventh Circuits also implicitly require evidence of knowledge at the time of the waiver. See, *e.g.*, *Stano v. Dugger*, 921 F.2d 1125, 1142 (11th Cir. 1991) (noting, in the context of the requirements for "intelligently" entering a guilty plea, that the defendant must be informed of the "the legal options and alternatives that are available") (quotation marks omitted); *Erskine*, 355 F.3d at 1166 (concluding that a defendant cannot knowingly waive a right where he "has not yet been adequately informed of all the elements that he must take into account in making his decision to forgo counsel and where the error in question involves the failure to provide him with that information").

As demonstrated above, a grave split has emerged between the circuits as to the type of evidence on which a Sixth Amendment waiver can be properly evaluated. This disagreement significantly affects the constitutional rights of criminal defendants, because the validity of a waiver now depends, in large part, on the circuit in which a criminal defendant has been indicted. *Cf.* John F. Decker, *The Sixth Amendment Right to Shoot Oneself in the Foot: An Assessment of the Guarantee of Self-Representation Twenty Years After* Faretta, 6 Seton Hall Const. L.J. 483, 516 (1996) (noting the lack of a standardized procedure for determining waiver). Review by this Court is necessary to resolve this significant conflict concerning an important and recurring issue of constitutional law. *See* Sup. Ct. R. 10(a).

3. The Fourth Circuit's opinion in *Thompson* highlights the inconsistency of the approaches taken by the circuits and the deleterious impact of the "entire record" approach. By looking to what Thompson said after his waiver, the Fourth Circuit abandoned the requirement that Thompson knowingly and intelligently waive his right to counsel, and simply relied on later evidence to conclude that he did so. This approach permits an end-run around the Sixth Amendment's guarantee of counsel by permitting a court to rely on later statements to determine a defendant's mental state at the time of the alleged waiver.

That construction not only is constitutionally impermissible, but also reflects a widespread and deepening confusion about what temporal restrictions apply when a court reviews waivers of the Sixth Amendment right to counsel. *See, e.g., McDowell v. United States*, 484 U.S. 980, 981 (1987) (White, J. dissenting from denial of cert.) (noting that a "conflict among the lower courts has emerged concerning the proper application and interpretation of our decision in *Faretta*"). The Court has often granted certiorari

on the thorny issues surrounding the application of *Faretta*, but it has not yet considered whether post-waiver statements meet the Sixth Amendment's requirements.

The Fourth Circuit's reliance on Thompson's post-waiver statements about his desire to proceed *pro se* demonstrates the risks inherent in the "entire record" approach.[6] First, this approach allows speculation about the effect of critical errors to sanction those errors. A district court is obligated to inform the defendant of his right to an attorney generally, and to a court-appointed lawyer if he cannot afford to pay his own lawyer. Although the court's statements at the arraignment implied that Thompson had a right to retain his own attorney, the court never went the extra step and offered him a court-appointed attorney (based on its erroneous conclusion that he was ineligible). For this reason alone, Thompson's waiver following the colloquy was insufficient. *See, e.g.*, Federal Judicial Center, *Benchbook for U.S. District Court Judges* 3 (4th ed. March 2000) (guiding the district court to "inform [every criminal] defendant: (a) of his or her constitutional right to be represented an attorney at every stage of the proceedings; and (b) that if he or she is unable to afford an attorney, court will appoint one without cost to him or her," and then to ask the defendant "(a) if he or she understands his or her right to an attorney; (b) if he or she

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[6] To square *Faretta* with its decision in *Thompson*, the Fourth Circuit relied upon its prior decision in *United States v. Singleton* for the proposition that it could view the record as a whole to determine waiver. However, in *Singleton* that statement immediately follows the court's conclusion that sufficiency of the waiver is viewed "by evaluating the complete profile of the defendant and the circumstances of *his decision as known to the trial court at the time*." *United States v. Singleton*, 107 F.3d 1091, 1097 (4th Cir. 1997) (emphasis added). *Thompson* thus represents a dramatic leap beyond *Singleton*, and vitiates the requirement that a defendant knowingly and intelligently understand the rights being waived at the time of the waiver.

wishes and is able to obtain counsel; [or] (c) if he or she wants the court to appoint counsel"); Fed. R. Crim. P. 44; Joseph A. Colquitt, *Hybrid Representation: Standing the Two-Sided Coin on its Edge*, 38 Wake Forest L. Rev. 55, 66-67 (2003) (noting that a "minimal colloquy" begins with the court "verif[ying] that the defendant understands the right to counsel"); 3 LaFave, *supra*, § 11.5(c), at 577-78 ("[e]ven the most adamant rejection of counsel . . . does not excuse the court's failure to" inquire about the defendant's waiver). By sanctioning the "entire record" approach, the Fourth Circuit was able to ignore these critical procedural and constitutional requirements.

Second, the Fourth Circuit's approach improperly assumes that knowledge gained after the waiver would not have resulted in a different decision at the time of the waiver. Here, the statements relied upon by the Fourth Circuit, if viewed in a vacuum, show at most that it was *possible* that Thompson understood that he was entitled to court-appointed counsel at his arraignment, and that he knowingly and intelligently waived that right. In reality, however, each statement was made *after* the district court reconsidered its initial decision that Thompson was financially ineligible, and *after* the district court offered, and Thompson accepted, court-appointed counsel. Indeed, the statements were made in the context of Thompson's plea to the court to remove the court-appointed counsel once it became clear to Thompson that the attorney's assistance was ineffective. Thus, by the time the statements were made, Thompson certainly knew that he was eligible for a court-appointed attorney and that he could choose between self-representation or representation by that attorney. It may be that, after his invalid waiver, Thompson tried to make the best of his self-representation, but this is irrelevant to the required constitutional inquiry. The record simply provides no evidence that Thompson

knew of his right to court-appointed counsel at his December 19, 2003 arraignment hearing.

Significantly, the Fourth Circuit's approach is even more free-wheeling than that of other "entire record" Circuits. The other circuits have approved the "entire record" approach by looking to events that occurred *before* the alleged waiver to conclude that the waiver was knowing and intelligent. These other circuits' use of the "entire record" approach may seem facially more reasonable than the Fourth Circuit's approach, but an unfettered "entire record" approach invites a reviewing court to speculate on the meaning of later events to substantiate claims of earlier knowledge, much as the Fourth Circuit did here. Such a post-hoc rationalization contravenes the entire point of determining—as the Sixth Amendment requires—whether a waiver is knowing and intelligent. *See, e.g.*, *Erskine*, 355 F.3d at 1169 (noting that in the context of whether a defendant validly waived his right to counsel, the question "is not, broadly, what the record reveals about [the defendant's] understanding of the possible penalty throughout the different stages of the proceedings—pre-trial, trial, and sentencing—but specifically what the defendant understood *at the particular stage of the proceedings at which he purportedly waived his right to counsel*." (emphasis added)); *cf. Wiggins v. Smith*, 539 U.S. 510, 526-27 (2003) (rejecting characterization of facts in the context of effective assistance of counsel where it appeared to be a post-hoc rationalization for a constitutional violation). Moreover, prohibiting reliance on post-waiver events is consistent with *Carnley*, *Ruiz*, *Vonn*, and *Faretta* because statements made months, weeks, days, or even hours after the waiver takes place might reflect later learned information. By relying on such statements, a reviewing court necessarily must speculate as to what the statement means about the defendant's earlier decision, especially where no earlier evidence compels the

same conclusion. Such an exercise simply cannot establish that a defendant making a waiver decision "knows what he is doing and [that] his choice is made with eyes open." *Faretta*, 422 U.S. at 835.

Thompson's waiver was found to be valid based solely on the Fourth Circuit's review of post-waiver events. Had it been reviewed in light of the evidence of a knowing and intelligent waiver at the time of the waiver, Thompson's waiver would have been judged invalid, and Thompson would have been entitled to a new trial in which he would have had the assistance of counsel throughout all of the pre-trial and trial proceedings. Providing Thompson counsel throughout his prosecution not only would have satisfied one of his basic constitutional rights, but it likely would have resulted in an acquittal or a less severe prison sentence.

The Fourth Circuit ignored the substance of *Faretta's* guarantees, since its approach permits rampant, after-the-fact speculation to assume that constitutional requirements were met. This holding is an affront to the Sixth Amendment's guarantee of counsel, and directly and significantly conflicts with well-settled caselaw in several other circuits. *Cf. Miranda v. Arizona*, 384 U.S. 436, 471-72 (1966) ("No amount of circumstantial evidence that the person *may* have been aware of his right will suffice to stand." (emphasis added)). Review by this Court is necessary to resolve this significant constitutional issue.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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November 22, 2006

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APPENDIX

Appendix A

United States Court of Appeals
for the Fourth Circuit

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
Daniel Lee THOMPSON,
Defendant-Appellant.

No. 04-5062.

Argued Feb. 3, 2006.
Decided July 25, 2006.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Leonie M. Brinkema, District Judge. (CR-03-530).

ARGUED: Amy Lynn Tenney, Jenner & Block, Washington, D.C., for Appellant. Linda I. Marks, United States Department of Justice, Office of Consumer Litigation, Washington, D.C., for Appellee. **ON BRIEF**: Julie M. Carpenter, Jenner & Block, Washington, D.C., for Appellant. Paul J. McNulty, United States Attorney, Karen L. Taylor, Assistant United States Attorney, Office of the United States Attorney, Alexandria, Virginia, for Appellee.

Before WILKINS, Chief Judge, and WILLIAMS and SHEDD, Circuit Judges.

Affirmed by unpublished opinion. Judge SHEDD wrote the opinion, in which Chief Judge WILKINS and Judge WILLIAMS concurred.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).SHEDD, Circuit Judge:

Daniel L. Thompson appeals his conviction and sentence for violating the Controlled Substances Act (the "CSA"), 21 U.S.C. § 801 *et seq.* We affirm.

I.

In the mid-1990s, Dr. Thompson was a physician licensed to practice medicine by the State of Ohio and was authorized by the Drug Enforcement Administration to prescribe controlled substances. Dr. Thompson and Vineet Chhabra, a businessman, founded and operated weight loss centers in Ohio. Over a two-year period, Dr. Thompson treated more than 3,000 patients suffering from obesity in these centers and never refused to prescribe medication to them based on diagnostic testing.

After obtaining an opinion from their attorney that such a practice would be lawful, Dr. Thompson and Chhabra created a website offering medications controlled under the CSA for the treatment of obesity. Rather than travel to Dr. Thompson's weight-loss centers, individuals would submit information relating to their medical history and current ailment over the internet. Based on the information provided over the internet, Dr. Thompson would prescribe controlled substances to these patients. For the next several months, Dr. Thompson earned more than $50,000 per month from his internet practice. Chhabra also established similar relationships with other physicians and pharmacists to offer controlled substances over the internet.

In the late 1990s, Ohio promulgated regulations requiring

physicians to perform physical examinations before prescribing controlled substances to Ohio residents for the treatment of obesity. In 2000, Dr. Thompson pleaded guilty in Ohio state court to violating the Ohio regulations. As part of his plea agreement, Dr. Thompson surrendered his medical license and DEA registration. After Dr. Thompson stopped prescribing medications, his brother, Dr. William Thompson, a physician licensed in Missouri, replaced Dr. Thompson as the prescribing physician for the internet practice.

In 2003, the government indicted Chhabra, Dr. Thompson, his brother, and several other physicians and pharmacists for conspiring to violate the CSA by distributing and dispensing controlled substances other than for a legitimate medical purpose and not in the usual course of professional practice. The indictment alleged that the defendants failed to check the accuracy of the information the patients provided over the internet, including their identities, ages, and qualifying medical condition. It further alleged that the defendants provided controlled substances even when no physician reviewed the information provided by the patients.

Before his arraignment, Dr. Thompson provided a financial affidavit to the district court "in case bail becomes an issue." J .A. 213. In his cover letter, Dr. Thompson informed the court:

> I have no attorney and intend on defending myself. The attorney listed, David Winters, will not be defending me because of financial problems with regards to another defendant.... Chhabra had been paying Mr. Winters legal fees and that is no longer the case. I believe Mr. Winters has already notified the prosecution of these events and they know that I will be defending this case pro se.

Id. Dr. Thompson's financial affidavit revealed that he was then unemployed, had less than $500 in assets, received only $1,000 each month from a trust account, and had more than $1.3 million in debt.

By the time of the arraignment in December 2003, the district court appointed counsel for two of Dr. Thompson's nonphysician codefendants. The district court concluded, however, that Dr. Thompson and his brother did not qualify for court-appointed counsel. Even though Dr. Thompson's financial affidavit showed that he had virtually no assets, the district court recommended that Dr. Thompson "liquidat[e] whatever assets you have to find counsel for yourself." J.A. 190. The district court also warned Dr. Thompson that:

> It's a risky business acting as your own attorney, but the law gives you the right to do so. If you are your own attorney, you should understand that as you speak, you may be making admissions or statements that the prosecution can use against you. You're going to definitely have a disadvantage in being able to defend yourself, but it is your right under the *Faretta* decision and under the Sixth Amendment. And while I'll permit you to be your own attorney, you will have to follow all the rules and regulations of the Court. We'll give you very little extra slack, a little bit, but you understand if you proceed at your own risk, you are a doctor, so you're well educated, so I have no doubt that you can adequately represent yourself, but there's nothing like having a lawyer.

J.A. 190-91. Dr. Thompson responded that he was "comfortable" representing himself. J.A. 191. Dr. Thompson entered a plea of not guilty and requested a jury trial. The

district court explained to Dr. Thompson his rights under the Speedy Trial Act. Dr. Thompson stated that he understood his rights, and he expressly waived them.

For the next several months, Dr. Thompson represented himself. Because Dr. Thompson was living in South Dakota and could not afford to travel, he missed some of the pretrial hearings. Dr. Thompson did, however, file substantive motions to dismiss. Although these motions were filed after the applicable deadline, the district court considered and denied them on the merits.

In June 2004, Dr. Thompson moved for "indigency status for all remaining parts of this criminal trial." J.A. 321. He explained that he "did not request indigency status at [the arraignment] because I was not aware of the personal financial hardship this trial would place on my limited financial resources." *Id.* Dr. Thompson was concerned that the district court would misinterpret his absence from pretrial hearings as indifference or contempt for the court. Dr. Thompson did not specify the exact relief he was seeking.

The district court deemed Dr. Thompson's motion for indigency status as a request for appointed counsel. The district court reexamined the financial affidavit that Dr. Thompson submitted before the arraignment and determined that Dr. Thompson qualified for court-appointed counsel. The district court promptly appointed counsel for Dr. Thompson. During the brief period in which Dr. Thompson was represented, his appointed counsel obtained a draft plea agreement and an estimated guideline range calculation for Dr. Thompson from the government. That estimate showed that Dr. Thompson's guideline range would be 46 to 57 months' imprisonment. His appointed counsel warned Dr. Thompson that he potentially faced a much longer term of

imprisonment if he refused to plead guilty and was found guilty at trial.

Within fifteen days of having counsel appointed, Dr. Thompson moved to be restored to pro se status. Dr. Thompson explained that he did not request a court-appointed counsel at his arraignment, because "I wanted to defend myself," and that his recent motion for indigency status was not meant as a request for counsel. J.A. 355. Dr. Thompson insisted that the counsel appointed to represent him was more of a hindrance than a help and "has made me feel compassion for those indigent defendants incapable of attempting a pro se defense." *Id.* Dr. Thompson further emphasized that he had "never requested court appointed counsel," that he had always "intended on being allowed the right to cross examine the prosecution's witnesses as well as to give my own opening and closing statements," and that "I am certain that I have a constitutional right to defend myself." J.A. 356. Dr. Thompson requested that the district court "remove my Court appointed attorney from this trial and allow me to defend myself as an indigent Pro Se defendant." J.A. 357.

In response, the district court informed Dr. Thompson that he could not receive any funding to hire expert witnesses, to travel to hearings, or to pay for other defense expenses if he returned to pro se status. The court explained that "[a]ppointing counsel is the only way that the Court can assist the defendant in defraying the costs of his legal defense." J.A. 360. The district court delayed ruling on Dr. Thompson's motion to return to pro se status to give him an opportunity to consider the ramifications to his defense of representing himself. The district court ordered Dr. Thompson to inform the court within five days if he wanted to keep his court-appointed counsel or if he instead wanted to

resume his defense pro se.

About ten days later, Dr. Thompson's court-appointed counsel moved to withdraw as counsel. On the same day, the district court granted Dr. Thompson's motion to be restored to pro se status, noting that Dr. Thompson, pursuant to the court's prior order, had "informed the Court that he wishes to have his court-appointed counsel withdrawn" and that Dr. Thompson "understands the implications of returning to his *pro se* status." J.A. 362. The district court also granted the court-appointed counsel leave to withdraw as counsel. Dr. Thompson did not object to these orders.

After several of Dr. Thompson's codefendants pleaded guilty, the government filed a superseding indictment. Shortly thereafter, Dr. Thompson filed a motion to recuse District Court Judge Brinkema from presiding over the impending trial. Dr. Thompson alleged several different bases in support of his claim that Judge Brinkema was biased against him. For instance, he claimed that Judge Brinkema was biased against physicians because she appointed counsel for nonphysician codefendants but denied counsel for him and his physician brother even though their net worth was substantially less than the nonphysician codefendants. Although Dr. Thompson claimed this showed Judge Brinkema's bias, he admitted that he had "never asked for" counsel and that he did not like that the counsel Judge Brinkema eventually appointed him was put "in charge of my entire defense." J.A. 429-30.[1]

Shortly before trial was scheduled to commence, the government entered into a plea agreement, pursuant to

[1] Although the district court docket does not reflect that the district court ruled on this motion, Dr. Thompson does not argue on appeal that Judge Brinkema was biased against him.

Fed.R.Crim.P. 11(c)(1)(C), with codefendant Chhabra, who the district court considered to be the primary leader of the conspiracy. Pursuant to this agreement, Chhabra agreed to plead guilty to only Count 1 of the Superseding Indictment and to receive a 33-month term of imprisonment. The district court accepted Chhabra's binding plea agreement.

After the remaining defendants pleaded guilty, only Dr. Thompson, his brother, and two other defendants proceeded to trial. Both Dr. Thompson and his brother appeared pro se. The government attempted to prove six counts against Dr. Thompson. Count 1 alleged that Dr. Thompson knowingly and intentionally conspired with others to distribute and dispense controlled substances other than for a legitimate medical purpose and not in the usual course of professional practice. The five other counts alleged that Dr. Thompson knowingly and intentionally illegally distributed and dispensed controlled substances on five particular occasions.

Dr. Thompson was allowed to give his opening statement. He told the jury that he was representing himself because he "absolutely hate[s] attorneys." J.A. 497. Dr. Thompson was also allowed to cross examine all of the witnesses who testified, including his brother, who was qualified as an expert witness in the field of internal medicine.

The jury found Dr. Thompson guilty of the conspiracy count and two counts of illegal distribution, but acquitted him of the remaining three illegal distribution counts. The jury acquitted or deadlocked on all the charges against the three remaining defendants.

Dr. Thompson moved for a new trial on several grounds, including that a new trial would give him the opportunity to have a court-appointed attorney from the onset to "discuss

plea agreement options with the government that would perhaps be much more agreeable." J.A.2094. Dr. Thompson insisted, however, that he "did not violate the CSA." J.A. 2123. The district court denied this motion.

The presentence report ("PSR") calculated Dr. Thompson's total offense level at 25 and placed him in criminal history category I, giving him a guideline range of 57 to 71 months. The district court, however, reduced the total offense level to 21 by lowering the drug quantity attributable to Dr. Thompson and by giving him credit for acceptance of responsibility. These rulings resulted in an adjusted guideline range of 37 to 46 months' imprisonment. The district court sentenced Dr. Thompson to 37 months' imprisonment, the minimum sentence under this guideline range, noting that this sentence "is more than sufficient, and it is also proper and appropriate in light of the sentences of the other defendants in this case." J.A. 2204.

II.

Dr. Thompson argues that the district court deprived him of his Sixth Amendment right to be represented by counsel. We disagree.[2]

The Sixth Amendment to the United States Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to ... have the Assistance of Counsel for his defence." This right mandates that "counsel be provided for a defendant who cannot afford to retain private representation in any case in which he will be incarcerated if convicted." *United States v. Singleton,* 107 F.3d 1091, 1095 (4th Cir. 1997). Although courts must protect a defendant's

[2] Dr. Thompson raises other assignments of error, but we conclude that they also lack merit.

right to counsel, *Johnson v. Zerbst*, 304 U.S. 458, 465 (1938), courts must also take care not to force counsel upon a defendant because the Sixth Amendment also gives a defendant the right to represent himself, *Faretta v. California*, 422 U.S. 806, 807 (1975). "[T]he right to self-representation ... derives from the Sixth Amendment principle wherein the defendant has the right to decide the type of defense he will mount." *United States v. Gonzalez-Lopez*, 399 F.3d 924, 934-35 (8th Cir. 2005), *aff'd*, __ U.S. __, 2006 WL 1725573 (2006). The defendant can waive the right to counsel if his waiver is knowing, intelligent, and voluntary. *Zerbst*, 304 U.S. at 468; *Singleton*, 107 F.3d at 1095. The right to counsel and the right to self-representation are mutually exclusive, and therefore "the assertion of one constitutes a de facto waiver of the other." *Singleton*, 107 F.3d at 1096.

Determining whether a defendant sufficiently waived his right to counsel is a question of law that we review de novo. *United States v. Owen*, 407 F.3d 222, 225 (4th Cir.2005). "The determination of whether there has been an intelligent waiver of the right to counsel must depend, in each case, upon the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused." *Zerbst*, 304 U.S. at 464. In deciding whether the defendant's waiver of counsel was sufficient, we examine the entire record. *Singleton*, 107 F.3d at 1097; *Townes v. United States*, 371 F.2d 930, 934 (4th Cir. 1966). While it is incumbent upon the trial court to determine that a defendant's waiver of his right to counsel is knowing and intelligent, no particular form of colloquy is required. *Townes*, 371 F.2d at 934. The court must make the defendant aware of the "dangers and disadvantages of self-representation," *Faretta*, 422 U.S. at 835, so that the defendant "knows what he is doing and his choice is made

with eyes open." *Adams v. United States ex rel. McCann*, 317 U.S. 269, 279 (1942). "The defendant must be made aware that he will be on his own in a complex area where experience and professional training are greatly to be desired." *United States v. King*, 582 F.2d 888, 890 (4th Cir. 1978).

Dr. Thompson argues that the district court erred by refusing to offer him counsel before his arraignment and by giving him no choice except to represent himself. We agree that the district court erred by deciding at the arraignment that Dr. Thompson did not qualify financially for appointed counsel.[3] There is no dispute that Dr. Thompson qualified financially to be appointed counsel at every stage of the proceeding.[4]

While we agree that the district court erred, that does not end our inquiry because we are required to review the entire record to determine whether a defendant waived his right to counsel. *See Singleton*, 107 F.3d at 1097. Under the unique circumstances of this case, we conclude that Dr. Thompson knowingly, intelligently, and voluntarily waived his right to counsel.

When Dr. Thompson provided a financial affidavit to the district court before his arraignment, he explained in his cover letter that it was for purposes of setting bail rather than for qualifying for appointed counsel. Dr. Thompson specifically informed the district court in his cover letter that

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[3] We do not decide that an arraignment is a "critical stage" at which the right to counsel applies. *See Owen*, 407 F.3d at 225 (assuming, without deciding, that an arraignment is a "critical stage"). We decide only that the district court erred in its initial factual determination that Dr. Thompson did not qualify financially to be appointed counsel.

[4] The government has not produced any evidence suggesting that Dr. Thompson's financial affidavit was fraudulent or incorrect.

he "intend [ed] on defending myself." J.A. 213.

From the transcript of the arraignment, it is clear that the district court understood, based on Dr. Thompson's letter, that Dr. Thompson wanted to represent himself. The district court recognized in the colloquy that Dr. Thompson was highly educated and could adequately represent himself, but it thoroughly warned Dr. Thompson that he would be at a disadvantage if he chose to represent himself. Despite these warnings, Dr. Thompson stated that he was "comfortable" representing himself. J.A. 191.

Subsequent events confirm that Dr. Thompson knowingly, intelligently, and voluntarily waived his right to counsel. As trial drew closer, Dr. Thompson moved for indigent status apparently in an effort to obtain travel and defense expenses. The district court misinterpreted this motion as a request for appointed counsel. After reexamining Dr. Thompson's financial affidavit and determining that he qualified, the district court appointed counsel for Dr. Thompson. Almost immediately, however, Dr. Thompson requested that his counsel be removed not only because Dr. Thompson felt the counsel was not helpful but also because he "never requested court appointed counsel" and wanted to "defend myself." J.A. 356-57. Dr. Thompson stated unequivocally: "I am certain that I have a constitutional right to defend myself." J.A. 356. In a subsequent filing, Dr. Thompson further explained that he was opposed to having counsel appointed because he did not want an attorney placed "in charge of my entire defense." J.A. 429-430.[5]

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[5] After indicating at the arraignment that he would represent himself, Dr. Thompson requested an advisory counsel to assist him. That request was denied. In his motion to return to pro se status after the district court appointed him counsel, Dr. Thompson insisted that "I specifically stated I planned on defending myself Pro Se during my arraignment and that the

From our review of the entire record, we conclude that Dr. Thompson validly invoked his Sixth Amendment right to represent himself from the beginning of this case. Although the district court erred by not initially offering him counsel, the district court reasonably and correctly believed, based on Dr. Thompson's pre-arraignment letter and his comments at the arraignment, that Dr. Thompson intended to represent himself. The record as a whole verifies that had the district court offered Dr. Thompson appointed counsel at the arraignment, he would have declined such an offer because he insisted throughout the proceeding that he be allowed to represent himself and control his own defense. Dr. Thompson's post-arraignment statements confirm that the district court's understanding at the time of the arraignment-that Dr. Thompson wanted to represent himself-was entirely correct.[6] Dr. Thompson never deviated from asserting his

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Court could provide me with co-counsel if [it] felt it would make the trial go smoother." J.A. 356. These statements confirm that Dr. Thompson intended to represent himself from the beginning of the proceedings against him and that he wanted, at most, an advisory counsel who could advise him but who would not be in charge of his defense. Refusal by a district court to appoint advisory counsel is not a cognizable Sixth Amendment violation. *Singleton,* 107 F.3d at 1100-01.

[6] Dr. Thompson argues that we cannot consider his post-arraignment statements in determining whether he validly waived his right to counsel. He relies on our statement in *Singleton* that we review the validity of a waiver based only on what the trial court knew "at the time" of the waiver. *Id.* at 1097. The context of this statement in *Singleton,* however, reveals that Dr. Thompson's reliance is misplaced. *Singleton* does not address or limit the consideration of post-waiver information. Instead, *Singleton* stands for the proposition that reviewing courts are not limited to considering what the district court ascertained only "at the time" of the waiver colloquy but can also consider "the record as a whole." *Id.* We need not decide whether *Singleton* allows us to consider Dr. Thompson's post-arraignment statements to determine in the first instance whether Dr. Thompson validly waived his right to counsel. We base our

right to represent himself and to control his defense until after the jury found him guilty. By invoking his Sixth Amendment right to represent himself, Dr. Thompson knowingly, intelligently, and voluntarily waived his right to counsel. *See Singleton,* 107 F.3d at 1096.

III.

We affirm the judgment of the district court.
AFFIRMED

---

determination that Dr. Thompson validly waived his right to counsel on his pre-arraignment letter and his comments during the arraignment. Dr. Thompson's post-arraignment statements merely confirm his waiver. Consideration of these subsequent confirming statements is not inconsistent with *Singleton.*

Appendix B

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA,	)Criminal No. 03-530A
	)
vs.	) Alexandria, Virginia
	) December 19, 2003
VINEET K. CHHABRA, a/k/a	) 9:00 a.m.
Vincent K. Chhabra; DANIEL L.	)
THOMPSON; SABINA S.	)
FARUQUI, a/k/a Sabina K.	)
Chhabra; JAMES A. TROVATO,	)
JR.,; SUNIL K. SETHI; DANIEL	)
M. VARALLI; WILLIAM D.	)
THOMPSON; LAURENCE L.	)
COCKERILLE, JR.; ARTURO L.	)
PORTALES; RUSSELL A.	)
JOHNSON; USA PRESCRIPTION,	)
INC.; CHHABRA GROUP, LLC;	)
and VKC CONSULTING, LLC,	)
	)
Defendants.	)

TRANSCRIPT OF ARRAIGNMENT
BEFORE THE HONORABLE LEONIE M. BRINKEMA
UNITED STATES DISTRICT JUDGE

* * * *

[Page 7]

1 MR. CONNOLLY: I'm sorry?
2 THE COURT: Does your client want a formal arraignment?

MR. CONNOLLY: Your Honor, we will waive formal reading of the indictment and ask for a trial date, which I'll address the Court at the Court's convenience.
THE COURT: All right. You're entering pleas of not guilty?
MR. CONNOLLY: We are, Your Honor.
THE COURT: All right. All right, that's fine. Then go ahead and have a seat, and we'll take up the next one. And you have a written waiver of speedy trial?
MR. CONNOLLY: We do, Your Honor.
THE COURT: All right, if you'd hand that to Mr. Wood? All right, who is here for Daniel Thompson?
Mr. Thompson, you're still pro se?
DEFENDANT D. THOMPSON: I am pro se, Your Honor.
THE COURT: All right. I do not find that you qualify for court-appointed counsel. I strongly recommend you consider liquidating whatever assets you have to find counsel for yourself. It's a risky business acting as your own attorney, but the law gives you the right to do so.
If you are your own attorney, you should understand that as you speak, you may be making admissions or statements that the prosecution can use against you. You're going to definitely have a disadvantage in being able to defend yourself,

[Page 8]

but it is your right under the *Faretta* decision and under the Sixth Amendment.
And while I'll permit you to be your own attorney, you will have to follow all the rules and regulations of the Court. We'll give you very little extra slack, a little bit, but you understand if you proceed at your own risk, you are a doctor, so you're well educated, so I have no doubt that you can adequately represent yourself, but there's nothing like having a lawyer.
If you do choose to have an attorney, you should

understand that he or she must be licensed to practice before this Court or associate with an attorney who can act as local counsel. Do you understand that?
DEFENDANT D. THOMPSON: I understand.
THE COURT: All right.
DEFENDANT D. THOMPSON: I feel comfortable doing the pro se, and I don't know if you ever consider shadow counsel, anything like that.
THE COURT: I have no money to appoint and I don't find in your case it would be appropriate to appoint at taxpayer's expense an attorney.
DEFENANT D. THOMPSON: That's no problem.
THE COURT: If you hire an attorney, that's fine, but I don't permit lawyers who are not permitted to practice in this Court to somehow get in here by shadow attorneying. If I find that out, I will raise ethics issues with that attorney. A

[Page 9]

lawyer either practices in this Court or he or she does not. I mean, that's not proper.
Now, have you received a copy of the indictment?
DEFENANT D. THOMPSON: Yes. And I also -- I waive. You don't have to read it.
THE COURT: All right. I assume you're entering pleas of not guilty to all the counts?
DEFENANT D. THOMPSON: That's correct.
THE COURT: All right. And I assume you want a trial by jury?
DEFENANT D. THOMPSON: Yes.
THE COURT: All right. Then if you'll have a seat, Dr. Thompson, we will arrange to have the trial date issued in a second.
DEFENANT D. THOMPSON: Thank you.
THE COURT: I'm sorry, there is one thing. Do you

understand your rights under the Speedy Trial Act?
DEFENANT D. THOMPSON: Yes.
THE COURT: That you would have a right to require this case to go to trial within 70 days?
DEFENANT D. THOMPSON: I understand.
THE COURT: Do you want a speedy trial, or are you comfortable waiving your --
DEFENANT D. THOMPSON: I'm comfortable waiving.
THE COURT: All right. We'll need to give you a waiver

[Page 10]

form if you haven't already gotten one, and take a look at it, and if you're comfortable signing it, then what we'll do is set your case for trial with the other defendants once we get there.
DEFENANT D. THOMPSON: That will be great. Thank you.
THE COURT: All right. We need the next one.
All right, Mr. Faruqui -- or Ms. Faruqui, I'm sorry.
Ms. Tassi, you're local counsel?
MS. TASSI: Yes. Good morning, Your Honor. Denise Tassi on behalf of Ms. Faruqui. Your Honor, at this time, as the Court knows, I've entered my appearance as local counsel. At this time, Your Honor, I'd like to introduce to the Court Mr.Craig Gillen. Mr. Gillen --
THE COURT: Have you filed the paperwork?
MS. TASSI: Yes, I have, Judge.
THE COURT: All right. I don't know if I've signed it. You have it? Yes, let me sign the order right now so it's done.
MS. TASSI: Okay.
THE COURT: All right. And again, I'm moving things along here. As long as the order has been signed. All right, do you-all wish to have a formal or informal arraignment?
MS. TASSI: Your Honor, our client waives formal

reading, pleads not guilty, and asks for a jury trial. Your Honor, she has signed the written waiver of rights.

* * * *

Appendix C

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA	)	
	)	
v.	)	No. 1:03cr530 (LMB)
	)	
VINEET K. CHHABRA, *et al.*	)	
	)	
Defendants.	)	

ORDER

Before the Court is the Motion by *Pro Se* Defendant Daniel Thompson for Indigency Status (hereinafter Motion for Indigency Status) and the same defendant's Motion to Dismiss Secondary to Double Jeopardy. For the reasons that follow, defendant's Motion for Indigency Status will be GRANTED, and defendant's Motion to Dismiss Secondary to Double Jeopardy will be DENIED.

The Court deems defendant's Motion for Indigency Status to be a motion for reconsideration of the Court's December 19, 2003 decision not to appoint counsel for defendant. Defendant filed a financial affidavit on December 15, 2003, and in his present motion defendant makes the same representations regarding his limited income. Upon reexamination of defendant's financial situation, the Court finds that court-appointed counsel is appropriate for this defendant. Accordingly, it is hereby

ORDERED that counsel be appointed for this defendant

pursuant to 18 U.S.C. 3006(A). However, should the Court later determine that defendant has the resources to pay for counsel, he will be ordered to reimburse the government for his court-appointed counsel's fees and expenses.

Also before the Court is defendant's Motion to Dismiss Secondary to Double Jeopardy, in which the defendant argues that the current case against him is a case of "double jeopardy," because of his prior conviction in Ohio state court for the same activities. Defendant misunderstands the protection afforded by the Fifth Amendment's Double Jeopardy Clause. It is well-established that the Double Jeopardy Clause does not deny the state and federal governments the power to consecutively prosecute the same acts. *U.S. v. Claiborne*, 92 F. Supp.2d 503, 506 (E.D. Va, 2003) (citing *Rinaldi v. U.S.*, 434 U.S. 22, 28 (1977)). Consequently, this federal prosecution does not violate the defendant's rights even if it is for the exact same acts for which the state of Ohio prosecuted him. Accordingly, it is hereby

ORDERED that defendant's Motion to Dismiss Secondary to Double Jeopardy be and is DENIED.

The Clerk is directed to forward copies of this Order to the defendant, Daniel L. Thompson, 320 East Third Street, P.O. Box 98, Egan, SD 57024, and counsel of record.

Entered this 7th day of July, 2004.

/s/
Leonie M. Brinkema
United States District Judge

Alexandria, Virginia

Appendix D

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA	)	
	)	
v.	)	No. 1:03cr530 (LMB)
	)	
VINEET K. CHHABRA, *et al.*	)	
	)	
Defendants.	)	

ORDER

Before the Court is a Motion by Daniel Thompson for *Pro Se* Status. This Motion was filed by the defendant himself,[1] not his court-appointed counsel who was appointed on July 9, 2004, after the Court granted this defendant's Motion for Indigency Status. In defendant Thompson's present motion, he indicates that he wishes his court-appointed counsel to be removed from the case. The defendant further states that he never intended for his Motion for Indigency Status to result in him being appointed counsel, and that he wishes to proceed with his defense *pro se*.

The Court is still not sure of the specific relief defendant was requesting in his Motion for Indigency Status, other than for the Court to understand how defendant Thompson's financial

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[1] During the course of *pro se* representation, the defendant has consistently mailed his motions directly to chambers. Should the defendant elect to continue in this case *pro se*, he must forthwith direct all motions for filing to the clerk of this court. Chambers will not continue to have motions addressed directly to the judge filed in the clerk's office.

limitations affect his ability to mount a *pro se* defense.[2] While the Court can understand how defendant's financial resources might affect his ability to hire expert witnesses or attend hearings and depositions, the defendant must realize that the Court will not provide funding for any aspect of his defense if he returns to his *pro se* status. Appointing counsel is the only way that the Court can assist the defendant in defraying the costs of his legal defense.

Because we are not sure that defendant has fully understood that a return to his *pro se* status would not entitle him to other financial assistance from the Court, we delay ruling on his Motion, and it is hereby

ORDERED that defendant Thompson inform the Court within five (5) days of receipt of this Order whether he wants to keep his court-appointed counsel or whether he wants to proceed *pro se*. If the defendant decides that he wishes to proceed *pro se*, and has his attorney file a notice of withdrawal with the court, we will deem that notice a response to this Order and consider the defendant as proceeding *pro se*.

The Clerk is directed to forward copies of this Order to counsel of record and defendant Daniel L. Thompson at 320 E. Third Street, P.O. Box 98, Egan, SD 57024.

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[2] Specifically, defendant seems concerned that the Court will interpret his absence at various hearings as indifference. Defendant may be assured that the Court does not interpret his absence as indifference. So long as defendant has filed an appropriate waiver of appearance for any pretrial hearings the Court may hold, defendant's physical presence in the courthouse is not required until trial.

Entered this 23rd day of July, 2004.

/s/
Leonie M. Brinkema
United States District Judge

Alexandria, Virginia

Appendix E

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA	)	
	)	
v.	)	No. 1:03cr530 (LMB)
	)	
VINEET K. CHHABRA, *et al.*	)	
	)	
Defendants.	)	

ORDER

Pursuant to the Court's Order of July 23, 2004, defendant Daniel Thompson has informed the Court that he wishes to have his court-appointed counsel withdrawn from the case, and that defendant wishes to represent himself *pro se*. The Court finds that the defendant understands the implications of returning to his *pro se* status. Accordingly, the Motion by Daniel Thompson for *Pro Se* Status is GRANTED and it is hereby

ORDERED that the appointment of John Gullette, Esq., to represent the defendant is vacated and Mr. Gullete is granted leave to withdraw from this case.

The Clerk is directed to forward copies of this Order to counsel of record and *pro se* defendant Daniel L. Thompson at 320 E. Third Street, P.O. Box 98, Egan, SD 57024.

Entered this 3rd day of August, 2004.

/s/
Leonie M. Brinkema
United States District Judge

Alexandria, Virginia

Appendix F

AO 245 S (Rev. 2/99)(EDVA rev.1) Sheet 1 - Judgment in a Criminal Case

UNITED STATES DISTRICT COURT
Eastern District of Virginia
Alexandria Division

FILED
DEC - 3 2004
CLERK, U.S. DISTRICT COURT
ALEXANDRIA, VIRGINIA

UNITED STATES OF AMERICA

v. Case Number 1:03CR00530-002

DANIEL LEE THOMPSON,

Defendant.

JUDGMENT IN A CRIMINAL CASE

The defendant, DANIEL LEE THOMPSON, appeared pro se, having waived counsel.

The defendant has been found not guilty on count(s) 3, 8, and 26 of the Superseding Indictment, and is discharged as to such count(s).

The defendant was found guilty on count(s) 1, 30, and 34 of the Superseding Indictment after a plea of not guilty. Accordingly, the defendant is adjudged guilty of the following count(s), involving the indicated offense(s):

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
21 U.S.C. § 846	Conspiracy to Violate the Controlled Substances Act (Felony)	October 2003	1
21 U.S.C. §841(a)(1), 841(b)(1)(C), 841 (b)(2); 18 U.S.C. § 2; 21 C.F.R. § 1306.04	Unlawful Distribution and Dispensing of Controlled Substances (Felony)	April 23, 1999	30
21 U.S.C. §841(a)(1), 841(b)(1)(C), 841 (b)(2); 18 U.S.C. § 2; 21 C.F.R. § 1306.04	Unlawful Distribution and Dispensing of Controlled Substances (Felony)	July 8, 1999	34

As pronounced on December 3, 2004, the defendant is sentenced as provided in pages 2 through 8** of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Signed this 3rd day of December, 2004.

A TRUE COPY, TESTE:
CLERK, U.S. DISTRICT COURT
BY _____
DEPUTY CLERK

Leonie M. Brinkema
United States District Judge

** Page 8 of this document contains sealed information

AO 245 S (Rev. 2/98)(EDVA rev.1) Sheet 2 - Imprisonment

Defendant: DANIEL LEE THOMPSON
ase Number: 1:03CR00530-002

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of THIRTY-SEVEN (37) MONTHS, as to Count 1 and THIRTY-SIX (36) MONTHS, as to each of Counts 30 and 34 to be served concurrently, with each other and with Count 1.

The Court makes the following recommendations to the Bureau of Prisons:

The defendant to be designated to a facility as close to the South Dakota area as possible.

The defendant shall surrender to the United States Marshal for this district as directed.

The defendant is continued on the Order Setting Conditions of Release entered on December 19, 2003 with the additional condition that he must self surrender as directed by the United States Marshal Service. At the time of self surrender, the bond conditions will be satisfied.

RETURN

I have executed this Judgment as follows:

_____

_____

_____

_____

Defendant delivered on _____ to _____ at _____
_____, with a certified copy of this Judgment.

c P.O. (2) (3)
Mshl. (4) (2)
U.S.Atty.
U.S.Coll.
Dft. Cnsl.
PTS
Financial
Registrar
ob

_____
United States Marshal

By _____
Deputy Marshal

AO 245 S (Rev. 2/98)(EDVA rev.1) Sheet 3 - Supervised Release

Defendant: DANIEL LEE THOMPSON
Case Number: 1:03CR00530-002

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of THREE (3) YEARS, as to Count 1 with ONE (1) YEAR as to each of Counts 30 and 34, to be served concurrently.

The Probation Office shall provide the defendant with a copy of the standard conditions and any special conditions of supervised release.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

While on supervised release, the defendant shall not commit another federal, state, or local crime.

While on supervised release, the defendant shall not illegally possess a controlled substance.

While on supervised release, the defendant shall not possess a firearm or destructive device.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

STANDARD CONDITIONS OF SUPERVISED RELEASE

The defendant shall comply with the standard conditions that have been adopted by this Court (set forth below):

1) The defendant shall not leave the judicial district without the permission of the Court or probation officer.
2) The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month.
3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
4) The defendant shall support his or her dependents and meet other family responsibilities.
5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
6) The defendant shall notify the Probation Officer within 72 hours, or earlier if so directed, of any change in residence.
7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by physician.
8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed or administered.
9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer.
11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the Court.
13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

AO 245 S (Rev. 3/99)(EDVA rev.) Sheet 3 (cont'd) - Supervised Release

Defendant: DANIEL LEE THOMPSON
Case Number: 1:03CR00530-002

SPECIAL CONDITIONS OF SUPERVISION

While on supervised release, pursuant to this Judgment, the defendant shall also comply with the following additional conditions:

1) Although mandatory drug testing is waived pursuant to 18 U.S.C. §3563(a)(4), defendant must remain drug free and his probation officer may require random drug testing at any time.

2) The defendant shall make a good faith effort to comply with all federal and state income tax requirements.

3) The defendant shall complete THREE HUNDRED (300) HOURS of community service as directed by his probation officer.

AO 245 S (Rev. 3/99)(EDVA rev.) Sheet 5 - Financial Penalties

Defendant: DANIEL LEE THOMPSON
Case Number: 1:03CR00530-002

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total monetary penalties in accordance with the schedule of payments set out below.

Count	Special Assessment	Fine
1	$100.00	
30	$100.00	
34	$100.00	
Total	$300.00	

FINE

No fines have been imposed in this case.

SCHEDULE OF PAYMENTS

Payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) cost of prosecution; (5) interest; (6) penalties.

The special assessment is due in full immediately. If not paid immediately, the Court authorizes the deduction of appropriate sums from the defendant's account while in confinement in accordance with the applicable rules and regulations of the Bureau of Prisons.

Any special assessment, restitution, or fine payments may be subject to penalties for default and delinquency.

If this judgment imposes a period of imprisonment, payment of Criminal Monetary penalties shall be due during the period of imprisonment.

All criminal monetary penalty payments are to be made to the Clerk, United States District Court, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program.

FORFEITURE

Forfeiture shall be directed in accordance with the Order of Forfeiture to be entered by this Court at a future date.

AO 245 S (Rev. 3/99)(EDVA rev.) Sheet 7 - Statement of Reasons

Defendant: DANIEL LEE THOMPSON
Case Number: 1:03CR00530-002

STATEMENT OF REASONS

[X] The Court adopts the factual findings and guideline application in the Presentence Report, except the Court adjusts the Offense Level to a level 21.

Guideline Range Determined by the Court:

Total Offense Level: 21

Criminal History Category: I

Imprisonment Range: 37 to 46 months as to Count 1
36 months as to Counts 30 and 34

Supervised Release Range: 2 to 3 years as to Count 1
1 year as to Counts 30 and 34

Fine Range: $ 7,500.00 to $ 75,000.00

[X] Fine waived or below the guideline range because of inability to pay.

Restitution: $_____

[X] Full restitution is not ordered for the following reason(s):

Not Applicable

[X] The sentence is within the guideline range, that range does not exceed 24 months, and the Court finds no reason to depart from the sentence called for by the application of the guidelines.

AO 245B (Rev. 12/03) Judgment in a Criminal Case
Supplemental Statement of Reasons

DEFENDANT: DANIEL LEE THOMPSON
CASE NUMBER: 1:03CR00530-002
DISTRICT: Eastern District of Virginia, Alexandria Division

SUPPLEMENTAL STATEMENT OF REASONS

APPLICABILITY OF THE FEDERAL SENTENCING GUIDELINES

[X] The court applied the Guidelines and all relevant enhancements in this case.

[ ] The court found the Guidelines unconstitutional in part, and imposed a sentence in accordance with the constitutionally applied portions of the Guidelines.

[ ] The court did not apply the federal sentencing guidelines at all in this case and imposed a discretionary sentence.

[ ] The court took some other action (Please explain below.):

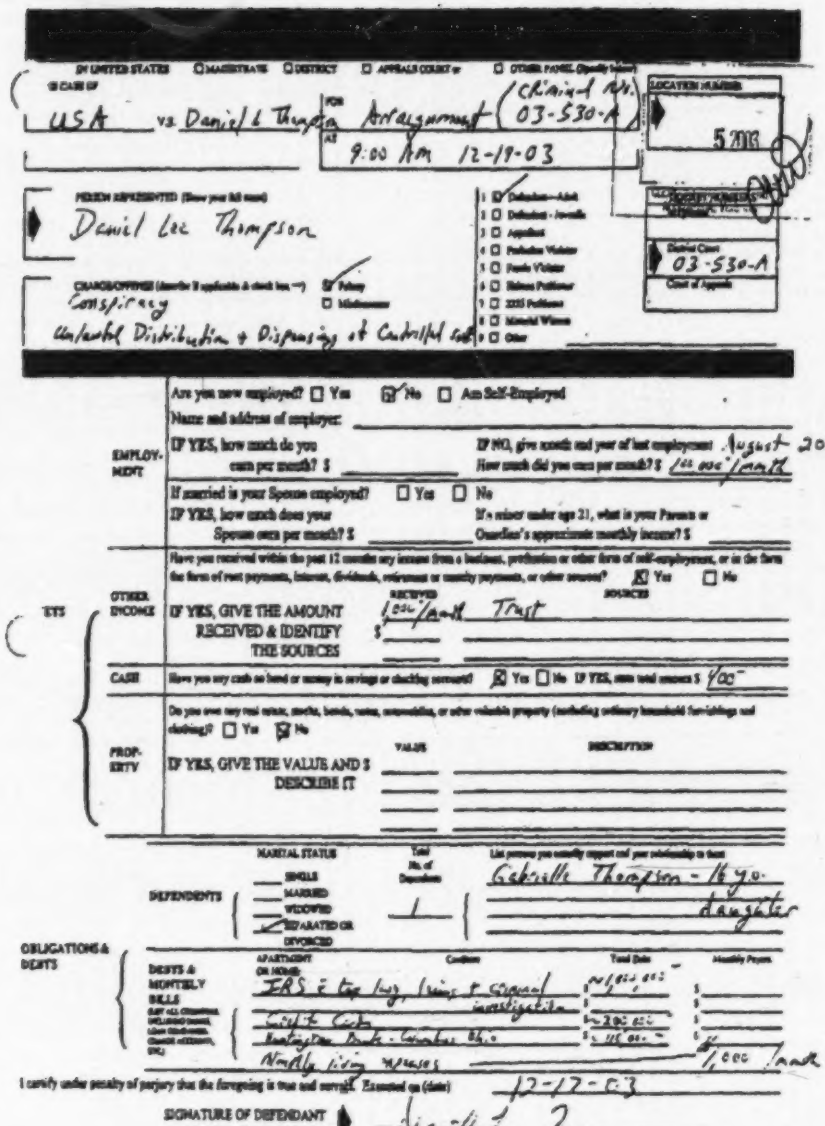
[ ] This judgment includes an alternative sentence.

AO 245B (Rev. 12/03)(EDVA rev.) Defendant's Information

DEFENDANT: DANIEL LEE THOMPSON page 1 of 1
CASE NUMBER: 1:03CR00530-002
DISTRICT: Eastern District of Virginia, Alexandria Division

35a

Appendix G



IN UNITED STATES ☐ MAGISTRATE ☐ DISTRICT ☐ APPEALS COURT or ☐ OTHER PANEL (Specify below)

CASE OF: USA vs. Daniel Thompson

FOR: Arraignment (Criminal No. 03-530-A)

AT: 9:00 AM 12-19-03

LOCATION NUMBER: 5 2013

PERSON REPRESENTED (Show your full name): Daniel Lee Thompson

1 ☑ Defendant—Adult
2 ☐ Defendant—Juvenile
3 ☐ Appellant
4 ☐ Probation Violator
5 ☐ Parole Violator
6 ☐ Habeas Petitioner
7 ☐ 2255 Petitioner
8 ☐ Material Witness
9 ☐ Other

CHARGE/OFFENSE (Describe if applicable & check box →) ☑ Felony ☐ Misdemeanor
Conspiracy
Unlawful Distribution + Dispensing of Controlled Sub

District Court: 03-530-A
Court of Appeals:

EMPLOYMENT

Are you now employed? ☐ Yes ☑ No ☐ Am Self-Employed
Name and address of employer:
IF YES, how much do you earn per month? $
IF NO, give month and year of last employment: August 2000
How much did you earn per month? $ 12,000/month

If married is your Spouse employed? ☐ Yes ☐ No
IF YES, how much does your Spouse earn per month? $
If a minor under age 21, what is your Parents or Guardian's approximate monthly income? $

OTHER INCOME

Have you received within the past 12 months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, retirement or annuity payments, or other sources? ☑ Yes ☐ No

	RECEIVED	SOURCES
IF YES, GIVE THE AMOUNT RECEIVED & IDENTIFY THE SOURCES	$ 1,000/month	Trust

ETS

CASH

Have you any cash on hand or money in savings or checking accounts? ☑ Yes ☐ No IF YES, state total amount $ 400.00

PROPERTY

Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? ☐ Yes ☑ No

	VALUE	DESCRIPTION
IF YES, GIVE THE VALUE AND DESCRIBE IT	$	

DEPENDENTS

MARITAL STATUS: ___ SINGLE ___ MARRIED ___ WIDOWED ✓ SEPARATED OR DIVORCED

Total No. of Dependents: 1

List persons you actually support and your relationship to them: Gabrielle Thompson - 16 y.o. daughter

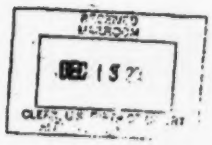
OBLIGATIONS & DEBTS

DEBTS & MONTHLY BILLS (LIST ALL CREDITORS, INCLUDING BANKS, LOAN COMPANIES, CHARGE ACCOUNTS, ETC.)	APARTMENT OR HOME	Creditors	Total Debt	Monthly Payments
		IRS & tax liens, liens & criminal investigation	$ Approx $50,000.00	$
		Credit Cards	$ approx $20,000.00	$
		Washington Mutual - Columbia MD	$ approx $11,000.00	$
		Monthly living expenses		$ 1,000 /month

I certify under penalty of perjury that the foregoing is true and correct. Executed on (date): 12-17-03

SIGNATURE OF DEFENDANT (OR PERSON REPRESENTED): Daniel Lee Thompson

19



Daniel Lee Thompson
301 E. 3rd street
PO Box 98
Egan, South Dakota 57024

Phone # 605-997-2176

Criminal case # 03-530-A

To the Criminal Clerk of Courts:

My arraignment is at 9 AM on 12-19-03 and I am sending a Financial affidavit with this letter in case bail becomes an issue.
I am also writing to inform the court that I have no attorney and intend on defending myself. The attorney listed, David Winters, will not be defending me because of financial problems with regards to another defendant... Vincent Chhabra had been paying Mr. Winters legal fees and that is no longer the case. I believe Mr. Winters has already notified the prosecution of these events and they know that I will be defending this case pro se.

Thanks for giving this matter your attention and please call me if there is anything I need to bring to the upcoming arraignment other than myself.

Sincerely,

Daniel Thompson